

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT LEVANDER,

Plaintiff,

-vs-

Case No. 2:08-cv-14241

Hon: David M. Lawson

I.C. SYSTEM, INC., a foreign
corporation, and JOHN DOE,

Defendants.

REX ANDERSON, P.C.

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DOBBS & NEIDLE, P.C.

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DEFENDANT'S MOTION FOR LEAVE TO FILE A SUR-REPLY

NOW COMES Defendant, I.C. SYSTEM, INC., by and through its attorneys, Dobbs & Neidle, P.C., and respectfully requests leave to file a Sur-reply to Respond to Plaintiff's Reply to Defendants' Response to Plaintiff's Application for Attorney Fees. As grounds for this motion Defendant states as follows:

1. Defendant respectfully submits that this Sur-reply is necessary because the Plaintiff's Reply contains several incorrect statements that cannot go unrebutted, namely: that a reasonable fee in an FDCPA action is the number of hours spent multiplied by a reasonable rate. (Pl's Reply, p. 1, Doc. 71).

2. Plaintiff also cites no authority for the proposition that he is somehow entitled to attorney fees from the date his complaint was filed until May 26, 2009.
3. In fact, the Supreme Court in *Hensley* specifically states that it is Plaintiff's burden to demonstrate that his hours were reasonable. *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983).
4. The *Hensley* Court further instructed:

The product of reasonable hours times a reasonable rate does not end the inquiry. There remain other considerations that may lead the district court to adjust the fee upward or downward, including the important factor of the 'results obtained.' This factor is particularly crucial where a plaintiff is deemed 'prevailing' even though he succeeded on only some of his claims for relief. In this situation two questions must be addressed. First, did the plaintiff fail to prevail on claims that were unrelated to the claims on which he succeeded? Second, did the plaintiff achieve a level of success that makes the hours reasonably expended a satisfactory basis for making a fee award?

Id. at 434.

5. Plaintiff's Reply Brief also cites new case law to which Defendant has not yet had an adequate opportunity to respond.
6. Allowing Plaintiff to respond through a sur-reply will ensure a complete and accurate record before the Court.
7. For the above aforementioned reasons, Defendant respectfully requests this Court to allow Defendant to file a sur-reply limited to 5 pages.
8. Pursuant to E. D. Mich. LR 7.1(a)(2), the undersigned counsel confirms that he attempted to contact Plaintiff's counsel on June 26, 2009, and left a message in which the movant explained the nature of the motion.
9. Further, it appears the Court may have waived the above contact requirement at the June 23, 2009 hearing on Plaintiff's Fee Application, where the Court granted

Plaintiff's oral motion to file a reply brief and instructed Defendant's counsel to file a motion for sur-reply if he determined it necessary.

WHEREFORE, Defendant respectfully requests that the Court grant this motion and allow Defendant to file a sur-reply.

Respectfully submitted,

Dated: June 26, 2009

/s/ Daniel J. Ammon
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CERTIFICATE OF SERVICE

I hereby certify that on June 26, 2009, I electronically filed a copy of the foregoing document with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

Rex C. Anderson, Esq.

Brian P. Parker, Esq.

and I hereby certify that I have mailed by United States Postal Service the documents to the following non ECF participants: ***N/A***

Dated: June 26, 2009

/s/ Daniel J. Ammon
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